IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3123 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANAKROY H DAVE

Versus

VICE CHANCELLOR

Appearance:

1. Special Civil Application No. 3123 of 1988

MR MUKUL SINHA for Petitioner No. 1

MS MAITHILI D MEHTA for Respondent No. 1-2

MR IM PANDYA AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/10/2003

ORAL JUDGEMENT

At the time of filing this petition, the petitioner was serving as a Director of Youth Welfare in

the Gujarat University, Ahmedabad. The petition is filed in order to get appropriate pay scale prescribed for the said post. It has been pointed out by both the sides appearing in this matter that during pendency of this petition, the petitioner has already retired and that now the question which is required to be decided by this Court is regarding the fixation of pension of the petitioner on the basis of the relevant pay scale.

2. The petitioner was initially appointed as an Assistant Director of Youth Welfare in the year 1962. It seems that the Youth Welfare Committee passed a resolution in February, 1962 to start a new department for students welfare and, accordingly, one post of Assistant Director of Youth Welfare was created. As pointed out in para 4 of the petition, the petitioner resumed his duties on 1.10.1962 and the petitioner continued to function as an Assistant Director of Youth Welfare, and the Director of Physical Education was looking after the Youth Welfare Activities by discharging additional duties for the same. On 20.9.1980, the Executive Council of the University passed a resolution to separate youth welfare activities from physical education and it was decided to create a new post of Director of Youth Welfare to look after the Youth Welfare Department and to abolish the post of Assistant Director of Youth Welfare. The said resolution was passed by the Executive Council of the University on the ground that the Youth Welfare Activity is increasing and strength of students is also increasing day-by-day and under these circumstances, it was decided to bifurcate the post of Director of Physical Education by separating youth welfare activities from the Director of Physical Education and accordingly it was decided to create the post of Director of Youth Welfare substantively in the pay scale of Rs.1100-1600. As stated earlier, the resolution in this connection was passed on 20.9.1980 and for that purpose approval of the State Government was also sought for and recommendation was also sent to the State Government. The said resolution of the University is annexed at page 19 Annexure C to the petition. Since at the relevant time, the petitioner was discharging the duties as Assistant Director of Youth Welfare and since it was decided to abolish the said post, the University passed an order on 22.6.1981 by which the post of Assistant Director of Youth Welfare was re-designated as Director of Youth Welfare. The petitioner who was at the relevant time serving as Assistant Director of Youth Welfare was accordingly appointed as Director of Youth Welfare in view of re-designation/upgradation of the post of Assistant Director of Youth Welfare. The petitioner

was accordingly informed about the said fact by letter dated 22.6.1981, which is at Annexure "D" (page 20) to the petition. As pointed out earlier, for the aforesaid post of Director of Youth Welfare, the pay scale was prescribed as Rs.1100-1600. The petitioner was informed about such appointment which was made subject to the approval of the State Government. It seems that in the meanwhile, the University revised the pay scale of Rs.1100-1600 to Rs.1300-1700. The said decision was taken by the Executive Council in connection with the revision of pay scale in its meeting held on 12.12.1981. However, at the time taking the said decision, the petitioner was already designated as Director of Youth Welfare and the University sanctioned his pay scale as Rs.1100-1600, which was stated to be revised to Rs.1300-1700, as stated earlier. The University thereafter was awaiting sanction from the State Government in connection with the fixation of the pay scale but the Government, at the time of filing of the petition, had not taken any decision approving the said scale as recommended by the University.

3. The grievance of the petitioner is that even though the petitioner was appointed as Director of Youth Welfare in view of the resolutions passed by the authority of the University, the prescribed pay scale of the post was not given to him at all and he was continued in the pay scale prescribed for the post of Assistant Director of Youth Welfare. According to the petitioner, since the post of Assistant Director of Youth Welfare on which the petitioner was substantively appointed was abolished by the University, the petitioner was rendering his services on the post of Director of Youth Welfare. The Vice Chancellor of the University by his letter dated 5.12.1986 also requested the Education Minister to give sanction to the post of Director of Youth Welfare and also to sanction the prescribed pay scale i.e. Rs.1300-1700 for the said post, which the petitioner was holding at the relevant time. Since at that time no decision was taken by the Government, the petitioner approached this Court by way of this petition.

4. By amending the petition, the petitioner has also taken the ground that he has been denied the benefit of proper scale and there is a gross delay on the part of the respondents in taking proper action and because of that the petitioner has suffered for a period of eight years. It is, therefore, prayed that respondent No.1 be directed to sanction the pay scale of the petitioner of Rs.1100-1600 for the post of Director of Youth Welfare and the said scale be further revised to Rs.1300-1700

with a prayer that the arrears of salary be also paid to the petitioner on the basis of the said fixation.

5. During pendency of this petition, this Court has granted interim relief in favour of the petitioner by way of an interim order passed in Civil Application No.1756 of 1989. Accordingly, during pendency of the petition, the petitioner has already been given the benefit of the aforesaid pay scale which was recommended by the University subject to Government's approval in connection with the post of Director of Youth Welfare. During pendency of the petition, as stated earlier, the petitioner has already retired by way of superannuation in the year 1996 and now he has been given pension also on the basis of the pay scale which he was getting in view of the interim order of this Court. It is also pointed out to this Court that the amount of difference of pay scale has also been paid to the petitioner at the relevant time by the State Government.

6. On behalf of the petitioner, it is argued by Dr Sinha that the University decided to create the post of Director of Youth Welfare in view of certain letters of Ministry of Education, Government of India, for which he has relied upon the correspondence at Pages 54 to 57. At Page 67 to the petition, the petitioner has annexed a list of about 46 Universities which are having the aforesaid post of Director of Youth Welfare. The University after considering the need has requested the State Government to sanction the said post and the pay scale for the said post as recommended by the University.

It is not in dispute that till the petition was filed the Government had not taken any decision in connection with the recommendation of the University, and as pointed out earlier, the petition was admitted by this Court and in Civil Application interim relief was granted.

7. On behalf of the State Government, affidavit-in-reply has been filed by one RA Dave, Under Secretary, which is at Page 29. In para 4 of the reply, it is stated that the State Government has not approved the proposal permitting the change of nomenclature of the post of Assistant Director of Youth Welfare to Director of Youth Welfare. The State has also not agreed for change of pay scale of Rs.650-1200 to Rs.1100-1600. According to the State Government, it was not necessary to have separate department of the youth welfare activities as no such post of Director of Youth Welfare is in existence in any University under Education

Department except in the Gujarat University. Since the Government had not approved the initial proposal of the University regarding change of nomenclature of the post and sanctioning the scale of Rs.1100-1600, according to the State Government, there is no question of sanctioning further revision of the said scale. Reference is also made to amendment in Section 20 of the Gujarat University Act. In paras 5 and 6 of the reply, it is stated as under:-

"5. I further say and submit that the Government has amended the relevant Section 20 of the Gujarat University Act (Annex.4) regarding laying-down salary scales and allowances with effect from 9.12.1981 and, therefore, in view of the exercise of powers by Executive Council in so far as they relate to laying-down the regulating salary scales and allowances of the officers, members of the teaching, other academic and non-teaching staff of the University affiliated colleges and recognized or approved institutions are subject to the approval of the State Government. This has become necessary to maintain financial discipline in the Universities and also to have uniformity amongst the Universities, as the State Government is paying 100% grant towards pay and allowances.

6. I, therefore, say and submit that as stated earlier, the Government has not accepted the proposal of university, therefore, there is no question of giving scale of Director of Youth Welfare to the petitioner on the part of the State Government. It is further added that consequent upon the judgment of Hon. Chief Justice's court on 2.4.92 in CA No.1756/89 in SCA No.3123/88, Government has sanctioned initial pay scale of Rs.1100-1600 thereafter pay scale of Rs.1300-1700 and the relevant pay scale in the Fourth Pay Commission vide letter No. -1090-CC-9-90(20-91)KH, dated 4.5.92 (Annex.5).

However, this pay scale was given to petitioner subject to the final judgment in SCA for 3123/88. The petitioner is also given the difference of pay arrears on 20.5.92. The petitioner is given the pay scale of Rs.3000-4500 in the 4th Pay Commission. The petitioner has retired on 31.5.96. The matter of granting corresponding pay scale of the 5th Pay

Commission to the petitioner is under consideration of Government."

As stated in the affidavit-in-reply, the petitioner has already been given the difference of pay arrears and has also been given the benefit of 4th Pay Commission recommendations of such pay scale which is sanctioned, subject to the result of this petition.

In affidavit in sur-rejoinder, which is filed by one Pradip Parekh, Under Secretary, Education Department, it is pointed out in para 4 that the Government of Gujarat has promulgated ordinance of 9.12.1981 being Gujarat Act 18 of 1982 by which Section 20 is amended by adding sub-section 3(A), and as per the said amendment, for regulating salary scales and allowances of officers, members of the teaching, other academic and non-teaching staff of the University, affiliated colleges and recognized or approved institutions, approval of the State Government is required. It is, therefore, stated that in view of the said provision, the University has no right to sanction any pay scale without prior approval of the State Government. On behalf of the State Government, it is, therefore, submitted that since prior approval of the Government is not taken, the University has no right to create the said post of Director of Youth Welfare nor it has power to prescribe any pay scale for the said post.

8. On behalf of the University, learned advocate Ms MD Mehta has submitted that initially the decision was taken to create the post of Director of Youth Welfare on 22.6.1981 and that sub-section 3(A) of Section 20 came into force on 9.12.1981. It is, therefore, submitted that before the amended sub-section came into force, the University decided to create the said post and hence the aforesaid provision cannot retrospectively apply and University was entitled to create such post as per its need. Learned advocate Ms Mehta further submitted that in view of youth welfare activities as well as in view of the mandate of the Central Government, the University decided to create the aforesaid post of Director of Youth Welfare so that the youth welfare activities can be properly looked into and for which a particular scale was prescribed. It is submitted by Ms Mehta that the University being an autonomous body is entitled to create such post. It is also submitted by Ms Mehta that the University also sent the proposals from time to time but unfortunately the State Government did not accepted the proposals. It is submitted that so far as the actual scale is concerned, the University decided to sanction

the same subject to approval of the State Government and the University had not given any actual benefit to the petitioner but ultimately in view of the interim order of this Court, the Government had agreed to sanction the said scale.

9. At this stage, reference is required to be made to Section 20 of the Gujarat University Act. Section 20(1) provides as under:-

"20(1) Subject to such conditions as may be prescribed by or under the provisions of this Act, the Executive Council shall exercise the following powers and perform the following duties, namely:-

....

(xxix) to appoint academic, administrative and other staff of the University, fix their emoluments, and define their duties and conditions of service and to take disciplinary action against them;

....

(xxxviii) to lay down and regulate salary scale, allowances and conditions of service of officers, members of the teaching, other academic and non-teaching staff of the University;

(xxxix) to lay down and regulate the salary scales, allowances and conditions of service of the members of the teaching, other academic non-teaching staff of affiliated colleges and recognized or approved institution

Sub-section 3(A) of Section 20 provides as under:-

" (3A) The exercise of powers by the Executive Council under clauses (xxxviii) and (xxxix) of sub-section (1) in so far as they relate to the laying down and regulating salary scales and allowances of officers, members of the teaching, other academic and non-teaching staff of the University, affiliated colleges and recognized or approved institutions, shall be subject to the

approval of the State Government."

10. It is required to be noted that under the aforesaid provisions, the Executive Council is entitled to exercise the powers in connection with the appointment of administrative staff and other staff of the University and fix their emoluments as well as to lay down and regulate salary scale, allowances etc.. So far as sub-section (3A) is concerned, the same came into force on 12.12.1981. In the instant case, before sub-section 3(A) came into force, a decision was already taken by the Executive Council to create the aforesaid post of Director of Youth Welfare and appropriate pay scale was also prescribed by the University. At the relevant time, when the said decision was taken, sub-section 3(A) was not in existence. So even otherwise the University was entitled to act upon the said decision. Yet for abundant caution, the University decided to take approval of the State Government though it is not in dispute that at the relevant time sub-section 3(A) was not even in existence as it came into force later on. In the meanwhile, University sent another proposal to revise the proposed scale of Rs.1100-1600 to Rs.1300-1700. However, when that proposal was sent, at that time, sub-section 3(A) was already enacted and was applicable.

11. So far as the earlier decision of creating the said post of Director of Youth Welfare is concerned, it is not in dispute that, at that time, it was within the power of the University to create such post and to change nomenclature of the post of Assistant Director of Youth Welfare to Director of Youth Welfare by upgrading the said post of Assistant Director of Youth Welfare. At that time when the University took such a decision, it was not necessary for it to take approval of the State Government. Otherwise also, approval is taken only in connection with the pay scale of the post as it has some financial bearing and not for any other purpose.

12. So far as the revision of pay scale of Rs.1100-1600 to Rs.1300-1700 is concerned, at that stage only, in view of sub-section 3(A), approval of the State Government was required before implementing the same.

13. Considering the aforesaid aspect of the matter, in my view, it can be said that the University took the decision as per the statutory powers available to it under clauses (xxix), (xxxviii) and (xxxix) to Section 20(A) and it was not necessary for the University to take prior approval of the State Government for upgrading or

changing the nomenclature of the aforesaid post. It is no doubt true that at the time when the proposal was sent again for revising the pay scale from Rs.1100-1600 to Rs.1300-1700, sub-section 3(A) was already in existence and, therefore, naturally prior approval was required at that time but at least prior to that when the post was created, no such approval was contemplated and even otherwise sub-section 3(A) cannot have any retrospective effect in any manner. After considering the facts and circumstances of the case, the University in its wisdom decided to change the nomenclature of the earlier post in order to have effective nomenclature by abolishing the existing post and creating a new post of Director of Youth Welfare, and the said action was within the power of the University.

It is not in dispute that the petitioner continued to serve on the post of Director of Youth Welfare for a considerable long period and since the Government was not giving approval to the revised pay scale, the petitioner was required to file this petition.

Considering the aforesaid aspect of the matter, in my view, there is absolutely no justification on the part of the State Government not to sanction the said post of Director of Youth Welfare in the University and the prescribed pay scale for the said post.

14. So far as the revision of the pay scale from Rs.1100-1600 to Rs.1300-1700 is concerned, all the employees getting the said pay scale of Rs.1100-1600 were given the revised pay scale of Rs.1300-1700. Therefore, when the pay scale of Rs.1100-1600 was revised by the University for all the employees and at least so far the said pay scale (1100-1600) is concerned, it was prescribed by the University prior to applicability of sub-section 3(A), the State Government is now required to be directed to give retiral dues to the petitioner and sanction pension of the petitioner on the basis of the pay scale which the petitioner was getting at the time of his retirement.

15. The State Government has already complied with the interim direction of this Court and the petitioner was also allowed to retire in the pay scale which was prescribed by the University for the post of Director of Youth Welfare.

16. Considering the aforesaid aspect of the matter and considering the fact that the petitioner has already been allowed to retire in the pay scale prescribed for

the said post and considering the relevant rules as indicated above by which the University was even entitled to create such post at the relevant time, it would be just and proper to direct the State Government now to sanction the pension of the petitioner on the basis of the aforesaid pay scale on which he has retired by way of superannuation in the year 1996.

17. In para 7 of affidavit sur-rejoinder, it is stated as under:-

"7. While referring annexure `C' to the petition, a copy of resolution dt. 20.9.80 of Executive Council under which Council have resolved to recommend the Government to create a post of Director Youth Welfare in pay scale of 1100-1600. But the Council has not sanctioned the post of Director of Youth Welfare in pay scale of 1100-1600 though the powers to sanction pay scale were with the Council by that time.

Now looking to the annexure E' to the original petition, a copy of resolution dt.12/12/81 by which Executive Council have revised the pay scale of employees/officers of university were not with the council by that time.

It can transpire from both the annexure C & D that when executive Council had power to sanction it had only recommended but when the powers were withdrawn the council had attempted to sanction the pay scale which lead us to believe that the exterior force might have compelled the Executive Council to take decision in favour of the petitioner Shri Dave. But Executive Council did not seem inclined to sanction pay scale of Shri Dave.

The above analysis makes it clear the petitioner Shri Dave's demand for pay scale is not legitimate and liable to be rejected."

18. Considering the aforesaid aspect of the matter, it is clear that the Executive Council had power to sanction the post at the relevant time and even the University has pointed out before this Court that after considering the facts and circumstances, the University had taken decision to create the said post of Director of Youth Welfare and to prescribe the pay scale. Even otherwise, at the time when such decision was taken and the pay scale was prescribed, it was within the power of

the University to act upon it as Section 3(A) came into force later.

19. In this view of the matter, it cannot be said that the University has acted contrary to law in any manner at the relevant time when it decided to create the said post of Director of Youth Welfare and when it prescribed the pay scale for the said post subject to approval of the State Government.

20. Considering all these aspects of the matter, this petition is allowed. However, in view of the fact that the State Government has already implemented the decision giving benefit of pension to the petitioner on the basis of last pay drawn at the time of his superannuation, the Government is directed now to continue the said benefit to the petitioner on the basis of such last pay of the petitioner. Accordingly the action of the University to sanction the post of Director of Youth Welfare and prescribe the relevant pay scale for the said post is upheld. The State Government is directed to continue the benefit which the petitioner is getting at present and the pension which is fixed by the Government on the basis of his last drawn salary is directed to be continued and if any revision is made in the pay scale the same may also be given to the petitioner.

21. The petition is accordingly allowed. Rule is made absolute with no order as to costs.

(P.B. MAJMUDAR, J.)

zgs/-